

No. 19-7148

IN THE SUPREME COURT OF THE UNITED STATES

JIMMY LEE BOSTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. Petitioner contends (Pet. 7-14) that the court of appeals erred in determining that his convictions for aiding and abetting armed robbery, in violation of Fla. Stat. § 777.011 (1983) and Fla. Stat. §§ 777.011 and 812.13 (1989), constitute convictions for a "violent felony" under the Armed Career Criminal Act (ACCA), 18 U.S.C. 924(e) (1). In Stokeling v. United States, 139 S. Ct. 544 (2019), this Court held that Florida robbery, which is a lesser included offense of armed robbery, categorically "qualifies as a 'violent felony' under [the] ACCA's elements clause." Id. at 554-555; see Fla. Stat. § 812.13(1)-(2) (2015). Petitioner nonetheless asserts that aiding and abetting armed robbery does not qualify as

a violent felony because it does not have "as an element the use, attempted use, or threatened use of physical force against the person of another" under the ACCA's elements clause, 18 U.S.C. 924 (e) (2) (B) (i).

For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Mojica v. United States No. 19-35 (Nov. 22, 2019), aiding and abetting a crime that has a requisite element of the use of force qualifies as a violent felony under the elements clause because an aiding and abetting conviction requires proof of each of the elements of the underlying offense. See Id. at 8-10.¹ Every court of appeals to have considered the question has so held, see id. at 9-10 (citing cases), and this Court has previously denied review of that issue in cases arising under the ACCA's elements clause and analogous provisions, including in Mojica.² The same result is appropriate here.

2. Petitioner also raises for the first time in his petition (Pet. 14-17) statutory and procedural due process challenges to the court of appeals' practice of affording precedential weight to

¹ We have served petitioner with a copy of the government's brief in opposition in Mojica. Although Mojica involved whether aiding and abetting robbery in violation of the Hobbs Act, 18 U.S.C. 1951, satisfies the elements clause in 18 U.S.C. 924(a)(3)(A), petitioner appears to recognize (Pet. 14-15) that resolution of the issues in that context would apply here as well.

² See Mojica, supra (No. 19-35); Deiter v. United States, 139 S. Ct. 647 (2018) (No. 18-6424); Ragland v. United States, 138 S. Ct. 1987 (2018) (No. 17-7248); Stephens v. United States, 138 S. Ct. 502 (2017) (No. 17-5186).

published orders denying applications for leave to file second or successive motions under 28 U.S.C. 2255. Petitioner did not raise those claims below, and the court of appeals did not address them. See Pet. App. A1; Pet. C.A. Br. This Court is one "of review, not of first view," Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005), and ordinarily does not address issues that were not pressed or passed upon in the decision below, see United States v. Williams, 504 U.S. 36, 41 (1992). That general rule should apply with special force here, as a challenge to the procedures employed by the court of appeals should be addressed by that court in the first instance. In any event, petitioner's statutory and constitutional challenges do not warrant review for the reasons stated in the government's briefs in opposition to the petition for a writ of certiorari in Robinson v. United States, No. 19-5451 (Dec. 4, 2019), and Valdes Gonzalez v. United States, No. 18-7575 (May 6, 2019).³

3. Furthermore, this case would also be an unsuitable vehicle for reviewing the questions presented because even if petitioner's aiding and abetting convictions did not qualify as violent felonies, he would not be entitled to relief. The district court correctly determined that petitioner would have the necessary predicate convictions for sentencing under the ACCA even

³ We have served petitioner with copies of the government's briefs in opposition in Robinson and Valdes Gonzalez.

if aiding and abetting armed robbery does not qualify as a crime of violence because four of petitioner's armed robbery convictions did not involve aiding and abetting. Pet. App. A2, at 3-4, 6. The court of appeals did not consider whether that determination was correct because it found that the convictions would qualify even if the offense was aiding and abetting. Pet. App. A1, at 7. But, if petitioner were to prevail, the district court's determination would provide an alternate basis for affirmance.

The petition for a writ of certiorari should be denied.⁴

Respectfully submitted.

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Solicitor General

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⁴ The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.